

Approved as Submitted: January 19, 2005

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – DECEMBER 15, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the meeting to order at 6:01 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 5

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: City of Morgan Hill v. Tanya J. Keppler
Case Number: Santa Clara County Superior Court, Case No. 1-04-CV-016682

3.

EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Case Name: U.S. Perma, Inc. v. Stevelle Construction, et al.
Case Number: Santa Clara County Superior 104CV031315

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: In Re Gregory T. Hemming and Kimberley L. Hemming
Case Number: United States Bankruptcy Court, Eastern District of California, Case No. USBC-EDC-2004-20318-B-7

5.

EXISTING LITIGATION

Authority:	Government Code section 54956.9(a)
Case Name:	Flooring Solutions Inc. v. Wells Construction et al.
Case Number:	104CV031843

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:08 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that authority was given to defend in item 5 as listed above.

SILENT INVOCATION

Mayor Kennedy announced that Morgan Hill has lost one of its outstanding community leaders last night, Bob Engles. He indicated that Mr. Engles was a tireless advocate for Morgan Hill serving as a planning commissioner, and on the General Plan and Economic Development Committees. He was appointed to the City's Visioning Committee that put together the Redevelopment Plan that is currently being implemented that includes the community and cultural center, the aquatics center, the new library and many other successful projects that are now either completed or on their way to be completed. He was also past president of the Morgan Hill Chamber of Commerce and volunteered to serve on many community serving committees and programs. He expressed the City's deepest sympathy to his wife Judy, his family and friends, indicating that this evening's City Council's meeting would be adjourned in his memory.

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Nick, a student, led the Pledge of Allegiance.

RECOGNITIONS

Mayor Kennedy presented Certificates of Recognition to retiring Morgan Hill Unified School District Board Members Del Foster, Jan Masuda and George Panos. He thanked them for their many years of excellent service to the citizens of Morgan Hill.

INTRODUCTIONS

Assistant Director of Public Works Mori Struve introduced three new Public Works employees: Kat Corrales, Office Assistant II; Ken Lozano, Maintenance Worker II; and Michael Craig, Utility Worker I.

PRESENTATION

Mayor Kennedy presented Director of Finance Dilles and finance staff members Tina Reza and Lourdes Reroma with a Certificate of Achievement for Excellence in Financial Reporting given to the City of Morgan Hill for its Comprehensive Annual Financial Report for the Fiscal Year ending June 30, 2003 by the Government Finance Officers Association.

Director of Finance Dilles informed the Council that in attendance this evening was Paul Niedermuller with Moss, Levy and Hartzheim, the City's new audit firm who would be willing to answer questions regarding the audit.

City Treasurer Mike Roorda recognized City Manager Tewes, Finance Director Dilles and his staff for all their assistance and the fine quality/hard work produced. He welcomed the City's new accountants/auditors and felt that they provided an excellent review. He indicated that the City received a clean bill of health for both the City and the Redevelopment Agency. He stated that the audit firm made recommendations to management and that it is his hope that City staff will follow up on this recommendation.

Mr. Niedermuller informed the Council that both the City and the Redevelopment Agency received an unqualified opinion. The audit firm did not have issues with the financial numbers. He felt that City staff had adequate internal controls in order for his firm to rely upon the numbers presented.

Council Member Carr thanked the School Board Members in attendance, indicating that he could not say enough about the work that they performed in their 4-8 year terms for the School District. He further thanked the outgoing School Board Members for their tireless work, their advocacy for students, public education, and all the work that went into making this community a great place to live.

Mayor Kennedy concurred with Council Member Carr's comments and thanked the School Board Members for their years of service they provided to the community.

CITY COUNCIL REPORT

Mayor Kennedy reported that the City Council has been meeting with South County stakeholders for the past six months. Invited and attending these meetings were representatives from the following agencies: Morgan Hill Unified School District, Gavilan College, the Realtors Association, Greenbelt Alliance, Open Space Authority, Santa Clara County Board of Supervisor Don Gage, and the City of Gilroy. The stakeholders in attendance addressed issues of concerns with respect to the City of San Jose's proposed development of Coyote Valley. He indicated that in August 2004 a letter was sent to the City of San Jose that outlined various issues that were identified with the Plan. Concerns include the adverse impacts associated with: traffic congestion, housing affordability, medical services and schools. He stated that

the response from the City of San Jose has been inadequate. At the Task Force meeting held last Monday, the South County Stakeholders group made a motion to reject the Coyote Valley Plan as outlined because the City of San Jose has not addressed any of the concerns raised, noting that the City of San Jose is moving full speed ahead. He felt that it was apparent that it is the City of San Jose's goal to move this plan forward, giving only lip service to the concerns that have been raised. He stated that a letter was prepared, presented, and read at the Coyote Valley Task Force meeting. The letter addresses South County Stakeholders' wish to work collaboratively with the City of San Jose and expressed frustration that this has not happened. He read part of the letter into the record which states that the lack of response to concerns raised leaves the South County Stakeholders with no option but to oppose the City of San Jose's Coyote Valley Plan. Based on the information provided by the City of San Jose, the South County Stakeholders believe that the proposed development of Coyote Valley is too great and that it would have a significant impact to the immediate area and all of South County. Further, should the City of San Jose delay task force approval of the preferred land use plan and work cooperatively with South County agencies to amend the plan in such a way that would address concerns, they would gladly endorse their planning efforts to promote successes. Otherwise, South County agencies will need to evaluate options available to ensure that failures do not impact the South County area. He indicated that he signed the letter on behalf of Board of Supervisor Don Gage; Russ Danielson, member of the Task Force; Shelle Thomas, president of the Morgan Hill Unified School District Board; Dr. McKennen, Superintendent of the Morgan Hill Unified School District; Alex Kennett, Chamber of Commerce Economic Development Committee; and all members of the Morgan Hill City Council. He stated that this letter was presented to all San Jose City Council Members as well as Mayor Gonzalez and the San Jose Task Force. If South County stakeholders do not receive a response addressing the issues raised, he stated that appropriate action will need to take place. He stated that the Council would continue its work on the Coyote Valley Plan and with the South County stakeholders group.

CITY MANAGER REPORT

City Manager Tewes reported that earlier today, a highly valued and respected member of the Public Works Department retired, Ray Dellanini. He stated that Mr. Dellanini managed the City's utility systems. He indicated that Mr. Dellanini began his career with the City as a utility worker 15 years ago and rose quickly to become one of the City's most valued employees. The affection to which his colleagues and the people he worked with was demonstrated today at his retirement luncheon. He stated that without Mr. Dellanini the City would not have the quality utility systems in place today. He thanked Mr. Dellanini for his 15 years of service to the City.

Lieutenant Booten indicated that Morgan Hill Police Department participates in the Avoid The 13 campaign every year as a campaign against drunk driving to reduce the number of fatalities and injuries associated with this particular crime. She stated that the City will be dedicating officers, on an overtime basis, to participate solely to target drunk drivers. She said that through the years, this program has been successful. This year, the Avoid The 13 campaign will start Friday, December 17 and end on New Years Day. He stated that the City will be participating in a county-wide strike team and that on Saturday, the City will be hosting a Driving Under the Influence (DUI) check point on Monterey Road near John Wilson Way. She informed the Council that the City's police department is diligent not only during these two weeks in the campaign, but is diligent 365 days per year. It is a mission to keep the City's streets safe and that everyone has a happy holiday. She informed the Council that the City just received

conformation of the award of a mini grant for funding of four additional DUI check points throughout this next year, good through January 2006.

CITY ATTORNEY REPORT

City Attorney Leichter stated that the Litigation Report has been made available and would be made available to anyone wishing a copy. She informed the Council that the state court proceeding of the Hacienda Mobile Home Park case has been dismissed and that the City has appealed to the United States Supreme Court to dismiss the case. She expects its dismissal by the end of the year.

OTHER REPORTS

None.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Mayor Pro Tempore Sellers stated that he was saddened to hear about the loss of Mr. Engles because he was a tremendous asset to this community and a close personal friend. He announced that services for Mr. Engles will take place on Monday, December 20 at 11 a.m. at the South Valley Community Church located in Gilroy.

Julian Mancias presented certificates of appreciation to Tony Eulo and Garrett Toy, staff members who have been instrumental with the Dayworker Center. He indicated that the opening of the Dayworker center was held on Saturday.

Bob Cerruti, San Martin resident, addressed the California Mission Bells that have been installed along Highway 101 by Caltrans. He indicated that the bells were designed to mark the original El Camino Real road. He stated that the bells installed in South County are not on the El Camino Real which is in fact Monterey Road. He stated that John Kolstad of Saratoga teamed up with Caltran to receive a \$1.4 million federal grant for the manufacturing and installation of the bells. When it was discussed where to install the bells, Caltran advised that they would be installed along Highway 101 and not along Monterey Road in South County. He indicated that Mr. Kolstad has just produced a new sign that reads "El Camino Real Original Route." He felt that it would be nice to have the bells installed along Monterey Road in Morgan Hill. He indicated that the cost of one bell is \$1,795 that includes the bell, pipe, all mounting hardware and paint.

Chris Bryant felt that in today's tough economic times, more and more public/private partnerships are forming to assist different businesses and to allow cities to accomplish their goals without long term negative impacts to budgets. He felt that more and more of these public/private partnerships are being considered as a return on investments; a cash outlay versus a cash return. While negative impacts resulting in additional outlays should be avoided, benefits to the community, the quality of life and the visibility of the community are all benefits that ultimately add to the economic base of a city. Even if a

project is revenue neutral or does not result in a significant return to the City, would improve the none tangible benefits such as the quality of life, providing venues for youth, or providing the perception of a city as a destination. He felt that this should be weighed heavily in any decisions made.

Dewey Kosich requested that the Council grant an extension of time to his 1-lot subdivision located on Christeph Drive as listed under agenda item 1. He indicated that he has been before the Council many times seeking extensions. He informed the Council that he has had insurance problems that resulted in difficulty in getting his parcel map recorded. He felt that he had enough time to record his map, but that he recently found out that the City will be closed December 23 thru January 3, 2005 and that he would run out of time. He stated that he is almost close to solving his insurance problems and is trying hard to develop the one lot subdivision. He requested a 15-day extension beyond December 31, 2005.

No further comments were offered.

Mayor Kennedy presented a Certificate of Recognition to John Tarvin, Rotary Club President, acknowledging the Rotary Club's donation of time and materials to the Paradise Park renovations.

City Council Action

CONSENT CALENDAR:

Council Member Carr requested that item 2, Council Member Tate requested that item 4 and Mayor Pro Tempore Sellers requested that item 19 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1, 3, 5-18 and 20 as follows:*

1. **REVISION TO SUBDIVISION IMPROVEMENT AGREEMENT WITH DEWEY AND CAROLYN KOSICH (APN: 764-32-024)**
***Action:** **Authorized** the City Manager to Sign the Revised Subdivision Improvement Agreement on Behalf of the City, Subject to Review and Approval by the City Attorney.*
3. **AB1600 DEVELOPMENT IMPACT FEE REPORT FOR FISCAL YEAR 2003/2004**
***Action:** **Accepted** and **Filed** the AB1600 Development Impact Fee Report for the 2003-2004 Fiscal Year.*
5. **AGREEMENT WITH LIVE WIRE, LLC**
***Action:** **Authorized** the City Manager to do Everything Necessary and Appropriate to Execute and Implement an Agreement with Live Wire, LLC; Including Making Modifications to the Agreement, Subject to Review and Approval by the City Attorney, to Share Sales Tax Revenue Generated by the Project.*
6. **ACCEPTANCE OF DONATIONS FOR PARADISE PARK IMPROVEMENTS FROM ROTARY CLUB OF MORGAN HILL**

Action: Accepted *Donation by the Morgan Hill Rotary Club for Improvements to Paradise Park.*

7. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9423, MISSION RANCH PHASE V – Resolution No. 5867**

Action: 1) **Adopted** Resolution No. 5867, Accepting the Subdivision Improvements Included in Tract 9423, Commonly Known as Mission Ranch Phase V; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.

8. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9424, MISSION RANCH PHASE VI – Resolution No. 5868**

Action: 1) **Adopted** Resolution No. 5868, Accepting the Subdivision Improvements Included in Tract 9424, Commonly Known as Mission Ranch Phase VI; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.

9. **APPLICATION FOR TRANSPORTATION CLEAN AIR FUNDS FOR SOLID WASTE COLLECTION VEHICLES**

Action: 1) **Authorized** the City Manager to Submit an Application to the Bay Area Air Quality Management District (BAAQMD) for Reimbursement of Expenses Incurred by Solid Waste Collection Vehicles (SWCV) Operating Within the City; and 2) **Authorized** the City Manager to Execute a Funding Agreement on Behalf of the City with the Bay Area Air Quality Management District for the Purposes Described Above, if Said Application is approved by BAAQMD; Subject to Review and Approval by the City Attorney.

10. **APPROVAL OF PURCHASE ORDERS TO U.S. FILTER FOR PERCHLORATE REMOVAL SYSTEMS AT NORDSTROM AND TENNANT WELLS**

Action: Authorized Issuance of Purchase Orders to U.S. Filter in the Amount of \$192,300.

11. **EMERGENCY EXPENDITURE FOR REPLACEMENT OF PUMP AND COLUMN AT BOY'S RANCH WELL #1 - Resolution No. 5869**

Action: 1) **Adopted** Resolution No. 8569, Declaring the Need for This Emergency Expenditure; and 2) **Approved** Expenditure of \$30,000 for Emergency Purchase and Installation of Replacement Pump and Column at Boy's Ranch Well #1.

12. **AWARD OF CONTRACT FOR CONSTRUCTION OF BOYS RANCH RESERVOIR #3**

Action: 1) **Approved** Project Plans and Specifications; 2) **Awarded** Construction Contract to CB&I Constructors, Inc. in the Amount of \$1,403,640; 3) **Authorized** Construction Contingency Funding of \$197,399; and 4) **Authorized** the City Manager to Execute a Consultant Services Agreement with Schaaf & Wheeler for Construction Services in an Amount not to exceed \$120,000; Subject to Review and Approval by City Attorney.

13. **AUTHORIZE PAYMENT OF THE COST OF THE NOVEMBER 2, 2004 GENERAL MUNICIPAL ELECTION**

Action: Authorized Payment in the Amount of \$43,052.00 to the Santa Clara County Registrar of Voters Office for Election Services.

14. **RESOLUTION PROVIDING COMPENSATION FOR CITY OF MORGAN HILL MANAGEMENT AND CONFIDENTIAL EMPLOYEES – Resolution No. 5870**
Action: Adopted Management Resolution No. 5870.
15. **AMENDMENT TO THE CITY OF MORGAN HILL'S RECORDS RETENTION SCHEDULE – Resolution No. 5871**
Action: Adopted Resolution No. 5871, Amending the City's Records Retention Schedule.
16. **ADOPT ORDINANCE NO. 1703, NEW SERIES**
Action: Waived the Reading, and **Adopted** Ordinance No. 1703, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1694, NEW SERIES, EXHIBIT B (ALLOWED USES FOR DIGITAL ISLAND VENTURE PROFESSIONAL CENTER) TO ALLOW A MAGNETIC RESONANCE IMAGING FACILITY (APNs 726-25-080 thru -082) (ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER).**
17. **ADOPT ORDINANCE NO. 1704, NEW SERIES, AS AMENDED**
Action: Waived the Reading, and **Adopted** Ordinance No. 1704, New Series, As Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 13.28 (SOLID WASTE COLLECTION AND DISPOSAL) OF TITLE 13 (PUBLIC SERVICES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING GARBAGE CONTAINER PLACEMENT FOR COLLECTION.**
18. **SPECIAL CITY COUNCIL MEETING MINUTES OF DECEMBER 1, 2004**
Action: Approved the Minutes as Written.
20. **NOVEMBER 2004 CITY FINANCE & INVESTMENT REPORT**
Action: Accepted and **Filed** Report.
2. **AMENDMENT TO CONTRACT FOR LEGAL SERVICES**

Council Member Carr requested an individual vote be taken for an amendment to a contract for legal services.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0): 1) **Authorized** the Mayor to Execute an Amendment to Agreement with Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP for Miscellaneous Legal Services; and 2) **Appropriated** \$50,000 from Unappropriated General Fund Reserves.

4. MORGAN HILL LIBRARY – STATUS OF SELECTION OF CONSTRUCTION MANAGEMENT FIRM

Council Member Tate said that staff prepared a good report until you read the last line of the staff report. He said that it was a surprise to read that the anticipated completion date for the library would be spring 2007 as it was his belief that this project would be on track to be completed at the end of 2006, incorporating a multiple prime approach to improve the timeline. He requested that the project move full speed ahead as was done with the Community and Cultural Center and the aquatics center.

Project Architect Dumas stated that the City received four construction management proposals today. In talking with some of the firms, some feel that a 24-month schedule is doable while some state that 30-months is doable. He said that it is staff's desire to work with the construction management firm to be selected and work out the actual construction schedule for the library.

Mayor Kennedy stated that he raised the same issue with the City Manager. The City Manager commented that if he had his way, a completion date would not have been identified in the staff report, identifying the schedule when the construction manager is on board. He felt that it was important that a completion date not be identified at this time, striking the date from the document so that the City does not create the impression that this is the target date. He recommended that the Council ask for an aggressive construction schedule as an aggressive schedule would keep the contractors on their toes and would not allow them time to drag their feet.

Mayor Pro Tempore Sellers stated that it was his belief that all Council members feel exactly the same way; that the construction of the library building is to be expedited.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Accepted** the Status Report, deleting the last sentence of the staff report (delete identification of the construction schedule).*

19. SPECIAL CITY COUNCIL WORKSHOP ON COYOTE VALLEY SPECIFIC PLAN MINUTES OF DECEMBER 1, 2004

Mayor Pro Tempore Sellers requested that page 4, paragraph 8 of the minutes be amended to more accurately reflect the intent of his comments. It was his intent to state that he was concerned that due to previous comments, the public may have the impression that none of the agencies present opposed the Coyote Valley development. He said that a lot of concerns were expressed by several agencies and that he did not want it to be implied that everyone was in concurrence and that there was a recent change in heart. He felt that there has been concern all along about Coyote Valley development. He stated that some individuals have expressed concerns more stridently and directly than others. However, he felt that everyone has come to the conclusion that there are concerns and that the Stakeholders' worst fears are being realized that these concerns are not being addressed.

Action: *Mayor Pro Tempore Sellers made a motion, seconded by Council Member Tate, to approve the Special City Council Minutes of December 12, 2004 as amended by Mayor Pro Tempore Sellers. The motion carried unanimously (5-0).*

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 21 as follows:*

21. NOVEMBER 2004 RDA FINANCE & INVESTMENT REPORT

Action: ***Accepted** and **Filed** Report.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chairman Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Item 22 as follows:*

22. JOINT REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF DECEMBER 1, 2004

Action: ***Approved** the Minutes as Written.*

City Council Action (Continued)

CONSENT CALENDAR:

Council Member Carr requested that item 23 be removed from the Consent Calendar.

23. EXTENSION OF TIME, EOT-04-08: McLAUGHLIN-SOUTH COUNTY HOUSING – Resolution No. 5872

Mayor Pro Tempore Sellers recused himself from this item due to a conflict of interest and excused himself from the Council Chambers.

Council Member Carr inquired as to the issue before the Council.

Jan Landenthal indicated that South County Housing is requesting an extension to the Measure P timeline for the Morgan Station project located on McLaughlin Avenue. She indicated that originally, the extension request was submitted because she was concerned that the project may be delayed due to the weather. She stated that South County Housing values its working relationship with the City. However, she felt it important to bring an issue to the Council's attention. She stated that City agreements require certain insurances be provided by the developer, including certain liability policy endorsements. She submitted endorsements that satisfy all the written requirements under the

subdivision agreement. In addition to this, the City previously accepted the same insurance from her on two separate occasions in the past year; one as recent as last September. In good faith, she purchased the insurance policy which is none refundable in the amount of \$300,000 for the two projects affected by City requirements: Morgan Station and the Watsonville Road teacher housing project. She indicated that approximately four weeks ago she learned that City staff was requesting additional refinement to endorsements for completed projects for a 10-year period. She stated that not only is this requirement not reflected in the subdivision agreement, it is not available to her based on changes in the insurance industry. She said that in addition to this, South County Housing is indemnifying the City through the subdivision agreement. She stated that South County Housing has the completed operations coverage for the full 10-year period. Therefore, should a problem occur in the future, which will be unlikely, the City could make a claim against South County Housing and its policy. It was her belief that the insurance provided by South County Housing satisfies the written requirements. She expressed concern that South County Housing is at a stalemate without a clear path on how to achieve resolution. She stated that staff has indicated that this might require a Council policy direction and that this may mean a delay until sometime mid to late January before such a policy action can be made. This would result in additional costs to South County Housing for this time period, indicating that she has paid all city fees and is paying interest on these fees. She also has to provide bonding should the final map not record this year. She did not want to make an issue on things like this, but felt that it was important to bring this issue to the Council's attention.

City Manager Tewes said that it is a condition of subdivision improvement agreements that the City be indemnified and insurance be in place to indemnify the City subject to the approval of the risk manager. He informed the Council that staff has had conversations with other developers who are having difficulty obtaining insurance as the insurance industry values this risk much higher today than it ever had, making it impossible to obtain insurance or making it available at a high rate. He said that the City has been trying to be creative about how it can obtain the proper insurance. He stated that Jack Dilles is the City's Risk Manager and has worked with the City Attorney in evaluating the risks, determining how best to protect the tax payers.

Director of Finance Dilles stated his concurrence with the facts as described. He said that it is true that the City is having problems securing the coverage that it has historically required. Also, the standard subdivision improvement agreement language does not explicitly call for what is referred to as "completed operations coverage." He said that the insurance market is making it difficult to obtain this insurance and that when it is available, it is very expensive. It seems to be made available to larger developers versus small developers. He said that it was important that the City approach the entire development community consistently and not make one set of requirements for one part of the community versus another. He indicated that it has been suggested that South County Housing may be a good risk as they have been developing in the community for many years and that they have a good relationship with the City versus a developer who may only be in the community temporarily. He stated that it is difficult to quantify all the risks and come up with a formula that is practical. He informed the Council that staff has been talking with the City's advisors (ABAG Plan) on getting some ideas on how the City might be able to proceed. He felt that the City can work through this issue, working with the City Attorney, to make sure that it is approached in the proper manner before moving ahead.

Council Member Carr noted that Ms. Lindanthal has stated that South County Housing has purchased

coverage based on what they have done and what was acceptable to the City in the past. He inquired why insurance coverage is different from today's perspective.

Mr. Dilles said that as the risk manager, it is his job to review all the insurance documents that come through the City. He felt that review of South County Housing's insurance was an oversight. He looked at the documents that were submitted previously under prior agreements and saw that it included completed operations coverage and did not pursue it to the point of receiving the documents that showed that the coverage would be extended to the City. He stated that South County Housing has a good policy in protecting themselves for ongoing operations and completed operations coverage; protecting them during the period of construction and after construction should they be sued. What the City is looking for is extending coverage to the City as an additional insured. He said that it has been pointed out that South County Housing and other developers would agree to indemnify the City. He said that staff is concerned that a developer may not be around some day or that financial capabilities would not be in place to be able to indemnify the City. He said that the risk is the City being sued (liability) that staff is trying to protect against and that it is not the facility itself. He informed the Council that the City has not had a claim associated with a South County Housing project.

Mayor Kennedy inquired whether insurance companies have changed the language in this respect where some developers' policies would indemnify the City while others would not.

Mr. Dilles responded that the insurance language has been an evolving process. He said that going back a number of years, there was an endorsement form entitled 1185 that applied in November 1985. This endorsement was easy to obtain and provided solid coverage to additional insured for ongoing operations. The insurance industry then complicated this insurance coverage more than likely as a result of claims and lawsuits. The insurance coverage was split up and then became sets of endorsements for the various types of coverage. Now, it has become more and more difficult to obtain the completed operations insurance, but not as difficult to obtain the ongoing operations coverage.

Mayor Kennedy indicated that the same issue was brought to his attention by Mr. DiConza, Mr. Garcia and others. He felt that this is more than a general problem.

Council Member Carr stated that he sees a difference between a completely private project and one in which the City is a partner. He felt that the issue affects not only this project but potentially the teacher housing project in which the City is a significant financial partner and of priority to him, the entire Council, and the Redevelopment Agency for some time. He felt that this places the project in a different category versus being a private/for profit project. He recommended that the City find a solution in a timely fashion as it is one of the issues being faced by South County Housing and could result in project construction delay. He stated that he appreciates staff's willingness to sit down and see what can be done about the issue and recommended that it be done on a fast track basis. He indicated that in his four year tenure on the Council, insurance has been a frequent topic before the Council, including the discussion about what is an acceptable risk. He felt that the City has to define what it considers an acceptable risk.

Mayor Kennedy said that insurance/risk is a constant a moving target and that once the City adopts policy statements as they relate to insurance, insurance companies change the rules. This results in the City being in the same position as it was before. He indicated that he has been told by a contractor that

they are bonded to insure against this type of situation. He inquired whether this bonding provides the City some protection.

Mr. Dilles said that bonds have not been a problem as they cover performance, labor and materials. Bonds ensure that facilities are properly constructed. If they are not, the bonds can be used to correct the problem. However, bonds do not cover liabilities or lawsuits of a third party. He indicated that the City is trying to protect against defects in the off site improvements (e.g., curbs, gutters, sidewalks, streets, sewer and water lines, or movement of land) that could cause considerable damage.

City Attorney Leichter said that if defects are attributable to what a developer has done, it would be appropriate to turn around and tender the lawsuit to the developer. She noted that the City has a \$100,000 deductible. If it is a situation where it is the City's fault for not maintaining the project after being accepted or some other extraneous circumstances, the City would defend the case. However, if the problem is caused by the developer, the City would like the ability to have the recourse against the developer even after acceptance of the project.

Ms. Lindanthal stated that South County Housing has been in businesses for 25 years and will be around many more years. She felt that in South County Housing's circumstances, the risk is minimal. She clarified that South County Housing is not asking for a special exception, but asking that the City accept the insurance that they have provided and has been accepted in the past. Doing so will allow this project to move forward.

Rocke Garcia said that this is an unfortunate insurance situation/issue and that it is not something caused by builders or cities. He indicated that the 1185 has been given to developers free of charge over the past 25 years. He said that the offsite improvements cost the Capriano project approximately \$800,000. In order for him to get the 1185 for the short time period he would be there would cost him over \$100,000. He stated that Sacramento has adopted a 10-year warranty where project developers are responsibility for structural faults. He said that this is an issue that the Home Builders Association is trying to address as this a serious problem. He requested that the City form a committee so that Morgan Hill can address this issue.

City Attorney Leichter noted that the request before the Council this evening is predicated on a letter of request to extend the development agreement based on the findings cited in the resolution before the Council which includes extended City processing of the subdivision improvement plans and delays with the issuance of subdivision bonds. She stated that it was not necessary for the Council to address the insurance issue at this time. She said that staff would appreciate the opportunity to conclude its research and return to the Council with a recommendation for any policy changes from current practice.

Council Member Grzan concurred with the statements as expressed by Council Member Carr. Should the City have a partnership with an agency such as South County Housing, he felt the City should consider sharing responsibilities, working with them to make sure that their investment and the City's investments are adequately funded and protected.

No further comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Sellers absent, **Adopted** Resolution No. 5874 as recommended by staff.*

Ms. Lindanthal said that adoption of the resolution, as recommended by staff, would result in South County Housing being placed on hold until January 19, 2005, at a minimum, in order for the Council to accept the insurance that has been previously accepted by the City in the past as it would require Council action. She stated that her concern is not the delay but having South County Housing's insurance accepted so that they can record the final map and move forward with the project. She informed the Council that staff will not sign off and allow the final map to be recorded nor permits to be pulled until the insurance issue is resolved. This results in a minimum of an additional \$10,000 out of pocket costs, carrying costs, and cash flow issues.

Mayor Kennedy recommended that the motion stipulate an agreement as an exception for South County Housing in this case while staff works on the insurance issue.

City Attorney Leichter expressed concern that the issue of the insurance was not referred to anywhere in the letter of justification, staff report, or the resolution before the Council. This is a secondary issue that was brought to the attention of the Council. She requested that staff be given the opportunity to return to the Council with a comprehensive risk analysis chart of situations where the City is a co partner and may recommend that the risk be lowered; perhaps requiring lower insurance. If staff returns with a risk management policy to the Council at the first Council meeting in January, this should not be too great a delay.

Ms. Lindanthal informed the Council that she cannot record the final map until the insurance is signed off. She indicated that South County Housing does not need a 120-day extension as they are ready to move forward with commencement of construction. She said that she closed the construction loan 30 days ago and has paid all fees. She acknowledged that she originally requested a 60-day extension which was believed to be enough time to accommodate bad weather. She said that it has been approximately four weeks that she has been wrestling with the insurance issue.

Action: *Council Member Carr made a motion to stipulate acceptance of the insurance that has previously been accepted from South County Housing in order to allow them the ability to file their final map, pull their permits and commence construction.*

Council Member Tate felt that South County Housing representatives and staff might be able to work out a different solution that may be better. He recommended that the Council make a motion to accept the risk and issue the permits, figuring out the solution at a later date.

Council Member Carr said that he was not suggesting that the City not try to find a solution and would agree to Council Member Tate's suggestion.

City Attorney Leichter requested that the motion maker consider amending the motion to state that the reason the Council is approving the resolution and allowing the project to move forward is because the City is partnering with South County Housing on this project and that they are a non profit, low income

housing developer. She said that inclusion of this statement would not set a precedent in the community.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Sellers absent, **Adopted** Resolution No. 5874, indicating that the Council is approving the resolution and allowing the project to move forward because the City is partnering with South County Housing on this project, noting that South County Housing is a non profit/low income housing developer.*

Mayor Pro Tempore Sellers resumed his seat on the Dais.

City Council Action

PUBLIC HEARINGS:

24. DEVELOPMENT AGREEMENT AMENDMENT, DAA: 04-01: TILTON-GLENROCK – Ordinance No. 1705, New Series

Planning Manager Rowe presented the staff report, informing the Council that the Planning Commission is recommending amendment to the development agreement to extend the time to obtain building permits for a period of six months, to March 30, 2005. Staff supports the six month extension as recommended by the Planning Commission based on the extended processing time and the fact that the applicant has demonstrated due diligence in moving forward with the project. He informed the Council that at the Planning Commission meeting, the developer stated that the six month extension would be acceptable.

Mayor Kennedy opened the public hearing. Rocke Garcia, applicant, requested Council approval of the extension of time, indicating that it is his hope that the pads would be completed by the end of the year, weather permitting. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1705, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1705, New Series, by Title Only, as follows: ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1680, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-03: TILTON-GLENROCK (APNS 764-09-006, 016, 017, 032 & 033) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.****

25. ZONING AMENDMENT, ZA-04-18/DEVELOPMENT AGREEMENT, DA-04-07: MONTEREY-SOUTH COUNTY HOUSING – Ordinance Nos. 1706 and 1707, New Series

Planning Manager Rowe presented the staff report, indicating that the request is to amend the zoning designation on a 4.8 acre area at the extension of Del Monte Avenue and Monterey Road, north of Wright Avenue. The zoning amendment request would change a portion of the property facing Monterey Road from general commercial and R-2 on the back portion to an R-3/Residential Planned Development. Also, being requested is the approval of a development agreement which would memorialize commitments made by the developer through the residential development control system, affordable competition process. He informed the Council that a request was made to designate portions of the parking area as “reserve parking,” parking that would be deferred and installed at a later date should it be determined to be necessary. He indicated that the Planning Commission agrees and recommends that the 18-parking spaces be designated as reserved parking and be developed as an open space amenity in a phase of the project. He stated that a parking utilization study would be completed 6-12 months after the site is fully occupied to determine if there is a need for additional parking spaces. At the planning commission meeting, there were comments received from area residents expressing concern about the project’s impact to on street parking. The study is to also determine whether or not the development would have any negative impacts on spill over parking onto the adjacent townhome development.

Mayor Kennedy referred to the corner gas station site that is now abandoned and inquired as to the zoning of that site and whether there was a possibility that this project could be expanded onto that site. If so, would it necessitate further zoning changes? He indicated that he was considering City acquisition of the site.

Mr. Rowe responded that the current zoning of the gas station site is general commercial. He said that there have been a number of inquiries about the gas station by individuals who are interested in reopening a gas station. He stated that the existing zoning of the site would not allow expansion of residential development and would necessitate a zoning amendment.

Mayor Pro Tempore Sellers recollected that Ms. Lindanthal indicated, at a prior Council meeting, that the commercial zoning district was far too expensive to consider acquisition of the site.

Mayor Kennedy opened the public hearing.

Jan Lindanthal noted that condition 14(m)(iii) calls out for a monument sign to be constructed at the Del Monte Avenue entrance. She requested that the condition be amended to stipulate the Monterey Street entrance as this is the intended main entrance to the development. She said that Reed Learner is the architect working with South County Housing to facilitate the historic renovation. She stated that it is his preliminary analysis that it would be difficult to move the historic building without destroying the interior condition of the materials and that the building would not withstand the move. She indicated that South County Housing would likely look at the historic “repair by replacement” guidelines. Should these guidelines be followed, it would not change the site plan but would result in reconstructing a new building versus moving the building. She stated that South County Housing staff has held several meetings with the neighbors and that the meetings were well attended by residents of Christine Drive, the mobile home park, and the condominium complex. Concerns were raised about parking along Del Monte Avenue, and that by widening Del Monte Avenue; it would make it a faster moving street. There was a strong feeling about a 4-way stop at the intersection of Del Monte and Wright Avenues once the

project is completed. She indicated that public works staff did not believe that there was sufficient traffic demand to warrant a 4-way stop. She said that construction noise is an issue that she would work closely with the neighbors. Concern was expressed about security of their property, particularly the condominium complex. Also, of concern was the impact to property values. She stated that in 1994 South County Housing completed a subdivision in Morgan Hill known as Sunrise Meadows, an affordable subdivision consisting of approximately 60 homes surrounded by market rate homes. She researched what the homes surrounding the affordable project were selling for. It was found that in 2002, the homes in Sunrise Meadows were selling from \$500,000-\$700,000, a price comparable to similar homes throughout the City. There is evidence that affordable housing, if done well, would not impact property values to adjacent properties. She informed the Council that the residents liked the fact that South County Housing located the single family homes along Del Monte Avenue. She stated that the neighbors favored the corner park as long as it was fenced and well lit. She indicated that adjacent residents expressed an openness and willingness to continue working with South County Housing on issues such as the CC&Rs to make sure that they are compatible with what they would want to see.

Mayor Kennedy inquired whether the gas station site could be incorporated into the project should the City be able to acquire the site.

Ms. Lindanthal said that incorporation of the corner lot would be a function of timing and how quickly it could come together as she is moving rapidly beyond the point of no return in terms of the site planning process.

City Manager Tewes indicated that it is staff's understanding that the gas station recently sold and that staff is not aware whether the new owners would be offering to sell the property to the City.

Ms. Lindanthal indicated that South County Housing was pleased that the Planning Commission supported the concept of reserving parking spaces. The six spaces that the Planning Commission did not elect to reserve are located where the large play structure is scheduled to be built. South County Housing would not want to see those spaces in this area so that individuals do not park up against the play structure. However, she was pleased that the Planning Commission was willing to test the concept. She stated that she would like to see all 24 spaces reserved as proposed.

Council Member Tate said that in reading the staff report, he found that South County Housing had a lot of experience in other locations where it is stated that they did not need much parking. Therefore, he felt that South County Housing could proceed and try it incrementally, reserving as much parking spaces as possible until needed. He understood that the Planning Commission was concerned about inadequate parking. He said that it was not clear to him how South County Housing would install the reserved parking.

Ms. Lindanthal felt comfortable with the 24 spaces being reserved as there would be more than enough parking spaces made available.

Council Member Carr referred to the Royal Court Apartments. If Mr. Learner is correct that you need to rebuild the historical structure, it was his assumption that the building would be rebuilt as an identical replica to what was there. This results in rebuilding the building and not using the existing materials.

Ms. Lindanthal indicated that South County Housing believes that it came up with a creative solution on how to use the existing buildings.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers said that the intersection at Wright and Del Monte Avenue is more than 300 feet from his home but close to his neighborhood. He appreciates staff commenting that they did not believe that a stop sign would be needed at this intersection because of the traffic flow. However, he stated that there are unintended consequences to actions taken by the City. He said that the City has seen an increase in buses in residential areas in the last few years near Britton Middle School. He said that it is difficult to access Del Monte Avenue from Wright Avenue. He requested that staff consider this not only as a traffic count; but to consider it in terms of traffic flow. He felt that Wright Avenue should be considered more as an arterial. He said that he did not hear resolution on the speed bump issue as far as Del Monte is concerned. He said that it feels as though this is a dense area and that drivers should be traveling slowly through this section of town. He said that he appreciates the creativity and South County Housing's willingness to work with the City on the historic resource. He was pleased to know that the historical building would continue to be restored. He appreciated Ms. Lindanthal's thoughts on affordable housing as well as the concerns of the neighbors. He felt that leaving the site in its current condition would have a much greater impact on property value than undertaking this project. He said that when the City first considered this project, there was significant concern about placing residential units along Monterey Road. The Council has since agreed that the viability of the project requires residential along Monterey Road. However, he did not support efforts to expand beyond this, particularly in viable commercial areas. He noted that the general plan encourages other uses for key properties, particular corner lots.

In response to Mayor Kennedy's inquiry, Mr. Rowe said that two projects to the north have committed to extend Del Monte Avenue from Wright Avenue to Llagas Road. This would result in having a second means of access to the neighborhood for emergency vehicles. He stated that Del Monte Avenue would become a north/south connector street. He said that staff would support the request to have the entry feature on Monterey Road.

Council Member Tate stated that he does not like to recommend against the Planning Commission. However, he felt that this was a situation where the project could incrementally add the number of parking spaces as they are needed. He would support allowing 24-parking spaces being reserved.

Mayor Pro Tempore Sellers noted that staff indicated that in six months, a parking utilization study would be undertaken. He inquired as to the process and the opportunity for the City to notify the residents in the neighborhood about their ability to comment on the study.

Mr. Rowe said that if it is the consensus of the Council to reserve 24-spaces, Sections 8, 9, 11 and 12 located on page 194 of the agenda packet would need to be amended as follows: Section 8 would state that a minimum of 113 spaces (as opposed to 119) shall be installed; Amend Sections 9, 11 and 12 to state "24-parking spaces" as opposed to "18-parking spaces. He noted that section 10 states that within 6-12 months of full occupancy, the City would conduct a utilization study, resulting in the review of the

study on an annual basis. He said that a utilization study would include the evaluation of the parking impacts to adjacent developments. He indicated that the utilization study could include a survey of residents in terms of their own experience. He said that the Council could include, under section 9, that the study is to include extending the survey to the residents adjacent to this project to allow them to comment on how the project has impacted their development. This would be factored into the results.

Mayor Pro Tempore Sellers supported including a survey to be filled out by adjacent residents in order to give them the opportunity to comment on the utilization study.

Council Member Carr requested that staff address the two surplus allotments. He inquired whether these two units can be used in order to the Council's goal of dedicating more units to the downtown.

Mr. Rowe said that the two units would not be needed by another affordable project in the fiscal year. He stated that typically, the City would look at granting surplus units to projects with partial allocation or current ongoing projects. He stated that staff would contact all potential eligible projects and inquire as to their level of interest in receiving the unused allocation. Staff would report the results to the Planning Commission. They would make the determination which project(s) would use the unused allocations. He noted that the downtown competition begins in fiscal year 2006-07 and that these are fiscal year 2005-06 units.

In response to Council Member Carr's question, Mr. Rowe indicated that two units could be moved from the open competition to the downtown as the Alicanti and Mission Ranch projects would not be asking for the two units.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Zoning Amendment Ordinance No. 1706, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1706, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE ZONING DESIGNATION OF A 4.8-ACRE AREA FROM R2(3,500) AND CG, GENERAL COMMERCIAL, TO R3/RESIDENTIAL PLANNED DEVELOPMENT (RPD) AND ADOPTING A PRECISE DEVELOPMENT PLAN FOR A 67-UNIT MULTI-FAMILY PROJECT LOCATED BETWEEN MONTEREY ROAD AND DEL MONTE AVENUE, NORTH OF WRIGHT AVENUE (APNs 764-12-008, -009, -018, & -019)/(ZA-04-18: MONTEREY – SOUTH COUNTY HOUSING), amending Sections 8, 9, 10, 11 and 12 of the Development Agreement as recommended by staff, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Development Agreement Ordinance No. 1707, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1707, New Series, by Title Only as follows, **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-04-02: MONTEREY – SOUTH COUNTY HOUSING (ROYAL COURT) (APNs 764-12-008, -009, -018, & -019)/(DA-04-07: MONTEREY – SOUTH COUNTY HOUSING), amending paragraph 14(m)(iii) to stipulate the “Entry Feature at Monterey Road main entrance” by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Redevelopment Agency Action

PUBLIC HEARINGS:

26. FIVE-YEAR IMPLEMENTATION PLAN (2004-2009) – Resolution No. MHRA-253

Director of Business Assistance and Housing Services Toy informed the Agency Board that staff made some minor text amendments to five pages of the Plan, including reformatting, and that a revised Plan has been distributed to the Council. He indicated that in 1994, California Redevelopment Agency law changed to require Five Year Implementations Plan that spells out what the Agency plans to do in terms of housing and non housing activities over a five-year period, including how cities plan to collect/spend tax increments. The second plan was approved for 2000-2004 and reflects the priorities of the Plan amendment. He indicated that this would be the City’s third implementation plan. He presented highlights from the last Plan as well as highlights for the proposed 2004-2009 Implementation Plan. He stated that it is proposed to collect a total of approximately \$68.2 in tax increments over the next five year period with \$52.4 million to be used for non housing activities and \$15.8 million to be used for housing activities. He stated that the City anticipates reaching its financial cap of \$147 million by this time. After this period, the Redevelopment Agency would no longer be able to collect tax increments for activities unless the City amends its fiscal cap prior to reaching the cap. He indicated that the City is collecting \$15.8 million in set asides but anticipates spending \$22 million over the five year period as it is proposed to spend the fund balance for projects during this time frame. It is further being proposed to spend \$36.5 million in non housing projects that includes the library, indoor recreation center, land costs for the aquatics center, street improvements, and economic development.

Chairman Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Agency Member Tate appreciated that staff presented a thorough Fire-Year Implementation Plan.

Chairman Kennedy felt that it would be appropriate to report to the public on the Redevelopment Agency (RDA) accomplishments and what is expected to be done with the remaining funds available. He recommended that this information be included in the budget. He indicated that he will be bringing this issue up at the Council retreat/workshop. He noted the staff report talks about a five year plan and that it is clear that the City is running out of RDA funds in the year 2008/09. He felt that it was time to

discuss extending the RDA and that this needs to be done soon as it is a long process to go through. He said that this will be a subject for discussion at the Council/RDA workshop.

Agency Member Carr supported condensing the report and presenting the report to the public so that they can see the good work of the RDA. He felt that the Council needs to discuss what will happen when the City reaches its cap, not assuming that the City will extend the RDA. He supports having the conversation versus waiting to the point where the City reaches its cap which may result in a lot of the options being eliminated.

Action: *On a motion by Vice-chair Sellers and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Adopted** Resolution No. MHRA-253, adopting the City of Morgan Hill Redevelopment Agency Five-Year Implementation Plan (2004-2009).*

City Council Action

OTHER BUSINESS:

27. SPORTS COMPLEX CONCEPTUAL MASTER PLAN, PHASE I CONCEPTUAL PLAN AND OPERATIONS FUNDING OPTIONS

Recreation and Community Services Manager Spier presented a power point presentation on the outdoor sports complex conceptual master plan, phase I, including operation funding options. She indicated that the charge of the Parks & Recreation Commission and the Council subcommittee was to recommend a master conceptual design of the proposed sports complex. This group was to either accept the concept before the Council in January 2002 or come up with a new design. The group came up with a new master conceptual design. The second portion of the action was to recommend a phase I plan of a budget of \$2.4 million as allocated as this funding resulted in viable playing fields. Also, before the Council is the maintenance operation plans that does not adversely impact the General Fund. She indicated that there are no operating dollars being set aside to take over the sports complex at this time. Staff requested that the Council review and approve the sports complex master conceptual plan of \$10.65 million and to approve the phase 1 conceptual plan at \$2.5 million which is \$100,000 over budget. There are a couple of suggestions regarding the \$100,000: 1) the City can take the overrun from redevelopment, 2) look at general fund reserves, 3) borrow from the sports field CIP impact fees from future years, or 4) direct the subcommittee to cut \$100,000.

Lee Stimeitz, Belinger Foster and Stimeitz, landscape architect, addressed the difference between the older plan (multi use fields with baseball and softball overlaid over soccer fields); and the current plan (divides the area into soccer fields, a multi use football/soccer field on one side and baseball and softball fields on the other). He indicated that there will be a pedestrian connection between the aquatics center and the sports complex parking lots. Some of the ideas that came out of the committee meetings were: 1) maintain the soccer fields on the north side of the complex as they are today, and 2) take one field and make it into a synthetic multi use turf field that can be used for soccer or football. It is the idea to have one premier field that can be used for both sports and used for tournaments. He stated that there are advantages to a synthetic field: 1) reduced water use and low maintenance; and 2) increase the amount of use on the field as it can be used at all times. He addressed the proposed uses, infrastructure, site

layout of the various fields, concession stand, meeting room, and parking area. He indicated that the City could install the infrastructures (e.g. grading, installation of irrigation for outfields, grading the infields) and that the sports leagues would be responsible for finishing the infields (install final grade material, infield lines/turf, dugouts, basic backstops and fencing, but not the outfield fencing, allowing portable fencing in the first phase); addressing possibilities associated with a public/private partnership.

Council Member Tate said that the Council had requested that consideration be given to parking overflow from the aquatics center on the southwest corner of the site. He did not see parking incorporated in the phase I plan.

Mr. Steimeitz said that the aquatics center overflow parking is not shown due to the fact that the existing base material is located on the other side. Therefore, it would be less costly to install a simple parking surface versus taking the area where you want to extend the parking lot and install full grading that would make it a functional parking area.

Ms. Spier informed the Council that Glenn Ritter is looking at the aquatics overflow parking as a separate project and will return to the Council with a budget number. She said that this is an evolution of work that a subcommittee has put together. The report before the Council is a report on the Parks & Recreation Commission's findings and analysis. She addressed the operation and maintenance options and stated that four funding options were considered: 1) City operated facility with user fees; 2) non profit youth sports group alliance; 3) private/public partnership (e.g., Coliseum); or 4) privately operated (e.g., Big League Dreams). She stated that staff believes that a user fee would need to be allocated at approximately \$11.30 based on current maintenance level of other City sports fields with an anticipated cost of \$264,000, approximately \$169,000 toward a contractual relationship to maintain the field. Staff would help control and coordinate the schedule and custodial needs. She said that there is a desire for the Sports Alliance to work toward a non profit sports alliance and return with a proposal (e.g., lease the public pieces or partner with the City with a coordinated group). She indicated that the subcommittee and the Parks & Recreation Commission recommends that the City proceed with a request for proposal to find out what can be done with a public/private venture.

Ms. Spier indicated that the subcommittee was very interested in maintaining scheduling and control of the outdoor sports field areas and that the privately operated concept was not endorsed. Should the Council decide to explore the private/public option being recommended, it may require prioritizing 10 conditions that the subcommittee proposed to the Parks & Recreation Commission. She indicated that the Parks & Recreation has endorsed the 10 conditions that have been brought before the Council. It is requested that the Council direct staff to create and send out requests for proposals if a public/private partnership is desired, reviewing the potential negotiations that may occur with different proposals based on the conditions that the Council prioritizes. She informed the Council that another idea presented late into the process by Larry Winslow is that he be allowed to help move forward a sponsorship program, indicating that the Parks & Recreation Commission endorses the concept and requested that this proposal be sent back to them in order to work with the non profit sports groups, returning to the Council with a proposed schedule and criteria for sponsorship of the facility. Staff further requested that the Council ask that a member of the Parks & Recreation Commission be appointed to work with the potential sports youth alliance. In terms of prioritizing the conditions, she said that a priority of the subcommittee is that the complex not be completely privately operated, noting that this condition may

limit a number of responses to the proposal the City receives. The lease payment covers 100% or the majority of the operation and maintenance in funding needed for the outdoor and public areas and that the base program presented this evening (e.g., five ball fields, six soccer fields and a football field) be the program that moves forward. Further that \$2 million in capital dollars be attributed to the project for further development. Structured as a private/partnership is desired, and that the subcommittee acknowledges that there would be some give and take in the plan. She indicated that the subcommittee and the Parks & Recreation Commission would like to have the opportunity to review any changes made to the plan by the Council.

Ms. Spier informed the Council that the California Youth Soccer Association is leasing the facility until October 2005 and that the City does not have operating dollars to operate the site from this time on. She indicated that the Sobrato soccer complex is beginning their environmental review process and that they have chosen a consultant. The agreement will be going before the City of San Jose City Council on January 11, 2005. She indicated that there is a \$100,000 shortfall for the phase I plan.

Mayor Kennedy noted that the staff report indicates that \$2.45 million (page 264) has been budgeted for construction of the outdoor sports complex.

Ms. Spier referred to page 262 of the agenda packet, indicating that \$2.4 million for construction has been allocated in Fiscal Year 2005-06, indicating that the \$2.45 million identified by Mayor Kennedy includes \$500,000 for CIP administration

Council Member Tate inquired how staff would draft the RFP to be as flexible as possible.

Ms. Spier said that should the Council accept the report, as presented, staff would draft the RFP with the 10 conditions in mind. She noted that staff is requesting Council prioritize the conditions and that the response to the RFP would determine how well respondents are able to meet the conditions based on Council priority. She said that it is staff's understanding that the City does not have \$262,000 in funding to operate and maintain the facility. She said that there is a possibility that sports groups may be able to contribute a portion toward these fees. She noted that it was estimated to cost \$11.32 in rental fees per hour for teams to reserve use of the fields. Neither walk on practice times nor special events were taken into account. She clarified that it is the youth sports leagues' desire to have the City control the schedule or they would. However, they realize that in order for them to assist as a partner, they have to form a non profit alliance. She said that they would prefer to form their own alliance and control the schedule. The city's request to the youth sports leagues is that the City has a right to reserve some community time to use the fields. She said that there is an opportunity to share a portion of the concession proceeds as part of the lease if a minimum threshold is met, similar to the model used at the Community Playhouse.

Mayor Kennedy opened the floor to public comment.

Bob Benevento indicated that he represents Pony Baseball and that he is a member of the subcommittee working on this complex. He said that a number of years ago, a number of youth sports organizations got together who were not familiar with each other and came forward with their own independent objectives. Over the past 11-12 months, these groups have come together and have come to appreciate what each is doing. He indicated that he is speaking on behalf of the Pony Baseball board president this

evening. He requested that the Council endorse a public/private arrangement as Pony Baseball cannot afford the \$40,000 maintenance fees to operate the complex. This would amount to approximately 50% of their budget as it exists today and more than likely would represent most of their entire annual budget. He said that Pony Baseball wants to be clear that they are not endorsing any particular private entity as this is a Council decision. He said that there have been many meetings where the City met with private entities and that there may have been members of Pony Baseball in attendance, but clarified that they did not represent the Board's position. He said that Pony Baseball is interested in exploring some form of an alliance with other sports recreation leagues in the community as there are many benefits to be gained and endorsed moving forward with a sports alliance

Stu Nuttall indicated that he is resident who came across this great group and stated his endorsement of a public/private sector organization. He felt that with a local entity such as this group the City would have control of what is going to take place.

Craig Van Keulen, Parks & Recreation Commission Chairman, requested that the Council accept staff's recommended action and accept the proposed conditions that staff would like implemented as part of the continued work that the Parks & Recreation Commission is doing to refine the project. He indicated that Ms. Spier and Mr. Struve did a great job in working on this project and moved it forward. He felt that they should be commended for their work. He indicated that he also serves on the subcommittee, indicating that there are a lot of conflicting interests and that they have been able to bring together a cohesive unit to move the project forward. He felt that it would be an asset to the community to fully develop this property as it is currently being utilized by an outside group, and that it would be great to have the site used by the residents of the community.

Bill Conrad stated his support of the project. He said that he was an original member of the Parks & Recreation Commission and a founding member of the Morgan Hill Youth Sports Alliance that appears to have been resurrected. He stated that he deals with every sports group in town. He stated that this project has been a personal dream for many years and was pleased to see that there is a great possibility that the project would be constructed. He felt that there are several individuals backing this project who will make it happen. If the Coliseum is the group to be involved with the project, he felt that it will become an awesome project

Debbie Cupp, representing the YMCA, stated that should the City be looking at an existing building with a public/private partnership, that the Council considers how it may compete with the indoor recreation center. She felt that it should be a City priority to make sure that both ventures are successful.

No further comments were offered.

Mayor Pro Tempore Sellers felt that it made sense to proceed with a request for proposal (RFP). He noted that the entire Council has not been involved in the process. He recommended that the Council consider the 10 items listed as guidelines as opposed to prioritizing them as conditions. He indicated that he has thoughts as to which of the items were more important than others. However, he would agree to proceed with the items as guidelines in order to receive RFPs. He recommended that the Council make a statement that it is not inclined to support a private operational model. However, should there be someone who wishes to submit a private operational model; the Council could take a look at the

proposal as it may contain some items that make sense that could be incorporated into the project. He felt that the operations cost is a high priority. He agreed with the comments made regarding possible impacts to the indoor recreation center. However, he has not seen where the direct impacts might be. He felt that there may be significant opportunities to be highly complementary to what is taking place with the outdoor recreation and indoor recreation projects. He indicated that there were several items that were originally contained in the indoor recreation center (IRC) project that have since been eliminated because they were not cost effective or because they did not meet the criteria of meeting the public's needs that were felt to be important. However, he felt that the needs still exist and that there are still opportunities that can be incorporated such as rock climbing walls that would be desirable but were not deemed appropriate for the IRC. He said that it could be stated that there is not to be competition with the IRC but that there are opportunities to take some of the work done and expand upon them. He noted that the City is starting to meet the community's needs and the needs of the youth. He said that Morgan Hill has started to evolve as a recreation hub for Morgan Hill, South County and the entire region. He felt that there may be other opportunities that the City may want to look at and start to build upon in the coming months that have large positive impacts on the City's future. He said that the public/private partnership is not only an opportunity to meet the community's needs directly, but also an opportunity for the City to define who it is as a community in a much broader sense (e.g., opportunities to build one structure that might contain outdoor restaurant access, saving on plumbing and space; or outdoor concession stands). He would support moving forward with "guidelines" in the process.

Council Member Grzan inquired whether any of the fields would be lighted.

Mr. Steimetz informed the Council that lighting is not proposed in the first phase, but will be a part of the build out of the final phase.

Ms. Spier indicated that the proposal before the Council comes from the youth sports league and that staff did not ask the adults sports leagues what they require as they were not a part of the process. She said that the City's operational dollars were based on the youth sports leagues. She indicated that the operational cost that would include lighting would be approximately \$23 per hour (\$11.30 per hour user fee plus \$11.70 per hour for lighting). She said that staff does not know how much of the \$269,000 per year for maintenance would be offset with a public/private partnership.

Council Member Grzan stated that the City has a deficit and that he did not know how the City could move forward with projects that would increase their draw on the general fund. He stated that it was difficult for him to support the continuation of projects in light of the deficit. Also, of concern is the regional aspect that may come into play with City projects. He said that the visioning process that took place in the mid 90s was one such that these facilities were to be designed and built for local use. As the City moves into a broader definition of what these recreational facilities are, he would like to see more public input in the process so that the public understands the implication of a regional facility.

Mr. Steimetz felt that the issue of the deficit is a good point and thus the reason for looking at the public/private partnership. It may be that the income from a public/private partnership can cover the maintenance cost so that there is not a deficit. This information would be determined through the RFP process and over time. Regarding community use versus regional use, he said that one of the items that all sports groups talked about was the significant income that comes from tournaments to be hosted by

local youth sports groups. They may be able to charge for parking, gate admission, and additional concession fees. It is an idea to balance the community with a facility that may be appropriate for tournament use. This is one way that youth sports leagues can generate revenue that can be used to help pay for part of the maintenance costs through the revenues to be generated. He stated that the subcommittee was made up of representatives from the youth sports leagues, but that it was made clear that portions of time needed to be set aside for community use which would include adult use. It was not proposed to exclude adult uses from this facility and would be programmed as part of the scheduling.

Council Member Tate stated that he appreciated the work that went into this as it has been almost a year long process. However, he noted that he was not a part of the process or discussions. Had he gone through the process, he would understand some of the tradeoffs being made. He noted that the Council has always stated, as part of the Visioning process, that beyond the community and cultural center, the operations and maintenance would have to be paid for by the facility. Therefore, he felt that the Council has to meet this commitment to the public. He said that through the RFP process, it has to ensure that the operations and maintenance would be paid for and not be a burden to the general fund. He said that he did not understand the RFP process being suggested, but that he understood that it would be using the conditions as a skeletal framework; allowing variations in terms of how bids can be received. However, he felt that the City will have to lay out the financing in order to make sure that the City understands what will happen on the operations and maintenance side of the project. He stated his support of staff's recommended action(s).

Council Member Carr requested that the Parks & Recreation Commission agendize the discussion of youth versus adult use. He stated that he wanted to hear visionary ideas about the uses. He was not sure whether the outdoor sports facility was the location for youth sports to take place and Community Park was the place that adult sports would take place. He inquired whether there were ways to ensure multi generational uses. He noted that this proposal addresses organized sports and not be just a walk on park or a place where kids can have a "pick up" game. He felt that the use and who will be using the facility, as well as the operations and maintenance costs, are things the Council needs to keep in mind. He noted that the staff report states that, as presented, the Phase 1 plan is \$100,000 over budget. He recommended that the City look at the \$1 million that has been earmarked for the relocation of the CYSA soccer complex instead of trying to identify other sources where the dollars could come from. He felt that this would be an appropriate use of some of these dollars, noting that the Council has not clearly earmarked these dollars. He felt that a good share of the \$1 million was to be used for the clean up of the site and that it would be a good use of these funds. He requested that staff look at the \$1 million as one of the funding sources for capital funds for the project. He echoed the fiscal concerns addressed by others.

Mayor Kennedy noted that the Parks & Recreation Commission was asked to go back and find a way to utilize the \$2.4 million available for the outdoor sports complex and forward a recommendation to the Council. He noted that this has been accomplished with a lot of hard work by all who have participated. He said that it would be difficult for him to attempt to undo any of this work. He stated that he would like to keep the private option open going through the RFP process as the City might be able to accomplish 95% of the goals at minimal or no cost to the City.

Mayor Pro Tempore Sellers noted that the proposal came within 4% of what the Council asked to be done. He recommended that the Council look at non RDA options for the funds such that the project

does not exceed the \$2.4 million budget. He felt that the City needs to consider the maintenance and operations costs in the broader context. If the facility operates at a \$50,000 per year deficit based on operations and maintenance, but the City sees an increase in hotel tax by 3% and sales tax by 7% per year by what is done at this facility after the community's needs are met, he felt that this would be a great trade off, resulting in the City ending in the black. He felt that the Council needs to account for this revenue and not merely look at the strict operations and income directed from the facility in the broader context. He clarified that this does not suggest that the revenues go back into the facility itself. He felt that the Council needs to be cognizant of the broader impacts and the income opportunity on the broader community that this facility might have.

Council Member Carr noted that it has been raised by a couple of Council members and other individuals that the City continues to keep in mind the idea of competition with the IRC and how it might affect things as the City moves forward with the outdoor sports complex. He said that the sponsorship proposal that Mr. Winslow put together is a great proposal, noting that the proposal includes a timeline. However, he wanted to make sure that the Council does not step on the toes of other efforts that might be taking place. He recommended that the Council has a conversation with the Community Foundation as this was one of the initial goals of the Foundation. When the Council formed the Community Foundation, support of parks and recreation was one of the items that it always talked about. He said that he did not want to nickel and dime things versus going after significant sponsorships.

Mayor Kennedy did not believe that conditions should be concrete ones, but viewed as guidelines; ones that could be used as goals and objectives. He cautioned about the use of the funds earmarked for the soccer complex. He noted that the Council has committed these funds to outside entities (e.g., City of San Jose, soccer group).

Council Members Carr and Tate did not believe that funds have been earmarked for the soccer complex.

City Manager Tewes said that the Council has appropriated \$1 million of RDA funds to assist in the relocation of the soccer complex and that it was earmarked to a specific group. He informed the Council that staff will return to the Council with the RFP. He said that it is clear that the Council would like to make the RFP as flexibility as possible. However, it is appropriate, and fair to the proposers, that the City establish the criteria by which the RFPs will be evaluated. He said that staff will return with this information for Council review.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Master Conceptual Plan, the Phase I Plan, and Program and Cost Estimates.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to Begin the Process for Architectural Proposals for Design of Phase I Plan.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Received** the Report from the Parks and Recreation Commission Sub-Committee on the Analysis of Maintenance and Operations Options.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to Develop a Request for Proposals (RFP) for Private-Public Operator Options with the Recommended Criteria for City Council Consideration.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** the Parks and Recreation Commission to Develop a Plan on Sponsorships.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Incorporated** Council comments as stated above.*

28. CABLE PUBLIC ACCESS PROVIDER CONTRACT

Program Administrator Eulo presented the staff report, indicating that Morgan Hill Access Television's (MHAT) contract will be expiring on December 31, 2004. He stated that MHAT has submitted a proposal to change some elements and deal points contained in the existing contract. He said that staff has developed a proposed replacement for the existing contract that would extend the agreement for several years. He identified the three items MHAT is requesting be changed and that were not incorporated into the proposed agreement: 1) A clear designation of a second channel to broadcast educational programming. He indicated that the agreement before the Council gives MHAT the option to request the second channel from the City, but does not grant the right via the contract. 2) They are requesting a larger percentage of the funding that the City receives to support both governmental and public access programming. Staff did not incorporate this request due to the fact that it would necessitate taking money from the general fund to support governmental programming. Given the City's fiscal situation, staff did not believe that it would be a good recommendation to forward to the Council. 3) A request to change the insurance provisions that are required. He said that this request would not be consistent with insurance provisions contained in all other City agreements.

Mr. Eulo informed the Council that he was recently contacted by an MHAT representative requesting one additional change. The change would be to section 7c in the agreement that would provide a security interest and specifies that the assets of the organization are to be made available to ensure performance under the agreement. He indicated that staff has prepared a change to this section should the Council consider it to be appropriate.

City Attorney Leichter stated that she had a discussion with Mr. Liegl about the requested change to Section 7c of the agreement. Should the Council support the request by MHAT, in principle, she was sure that she and Mr. Liegl can agree upon language that would be acceptable. She indicated that MHAT does not want to guarantee the agreement with property which has not been purchased or allocated with City funds. She was confident that something could be worked out.

Mr. Eulo informed the Council that the parent organization sponsors the Poppy Jasper Film Festival which has nothing to do with MHAT. He stated that MHAT does not want the assets that they may

obtain through Poppy Jasper to somehow be put up as security interest for their performance as a public television access provider.

Mayor Kennedy indicated that he inquired early on about the original proposal to increase the total amount of funding going back to the rate payers.

Mr. Eulo informed the Council that MHAT has seen the significantly higher resources that communities to the south have obtained from Charter Cable. The memo attached to the staff report indicates that the City of Morgan Hill made a conscious decision not to pursue this path in 1988. Subsequently, the City of Morgan Hill was able to close a deal with Charter's predecessor, Falcon Cable, in order to rebuild the cable system faster. He said that Morgan Hill cable subscribers are paying much less for public, educational and governmental access services. These were good aspects of the decision. However, the negative aspect of the decision is that the City's resources are far fewer and that the facility in Gilroy is substantially better, more comprehensive and up to date compared to the one located in Morgan Hill. In addition, Gilroy has ongoing paid staff available to provide these services. He informed the Council that the MHAT representatives are requesting that the City consider engaging in some discussions with Charter on increasing the amount of support that comes from the cable subscribers to support access services. He indicated that staff has not had conversations with Charter on this aspect and that it was not his expectation that the Council would endorse the increase and charge the rate payers more money. He requested Council direction on whether it would like staff to pursue these discussions with Charter. He indicated that the current contract with Charter would be in place for approximately four more years.

Mayor Kennedy opened the floor to public comment.

John Liegl stated that he received the contract two days ago. Upon reviewing the contract, he identified some problems with the contract that he wanted to raise and submitted them in writing. He said that the Media Access Coalition of California has deep ties with the City of Morgan Hill. Their commitment to the City is great and they are taking steps to increase its services to the community. He said that this year MHAT has set five-year goals and that it is their intent to accomplish them year by year. They are becoming a diverse company, moving into other areas of communication with the Poppy Jasper Film Festival being one of the diversities. They are also applying for grants and plan to develop internet sites and radio programming, exclusive to South County. He said that the diversity will be a way to support projects such as MHAT. He noted that the budget for MHAT is approximately \$61,000. He indicated that the City Manager Tewes stated that approximately \$2,000 could be achieved through PEG fees. He stated that MHAT's budget had a shortfall of approximately \$3,000 which they were able to supplement through Poppy Jasper. He noted that the organization is trying to find other ways to obtain financing and get MHAT to where it will be operating in the black. As funding from Charter Cable through the City has decreased, they have found it harder and harder to keep a good budget. He stated that the contract before the Council this evening is their commitment and agreement with the City to provide the public access television service and possible future expansion of these services. He informed the Council that they are in contact with the school board and that they are discussing educational programming. He does not expect/intend to dissolve their relationship in the near future. However, the portion of the contract that states all of Media Access Coalition of Central California would be turned over to the City of Morgan Hill would mean that the other endeavors would be at risk. He said that it was his belief that the insurance issue has been accomplished. Regarding the other issues raised by Mr. Eulo this evening, it

was his belief that they could come to an agreement on these items. He said that MHAT wants to make sure that the other interests are saved for their needs as they grow as a company.

City Manager Tewes clarified that funding for both the public access channel and the governmental access channel have been declining because the cable penetration has been declining as residents chose other options other than cable.

Walter vonTagen said that MHAT is only receiving money from Charter for Morgan Hill and not from the service areas outside the Morgan Hill City limits. He said that next year, their total budget will be \$27,500; approximately one-third of what is paid to the executive director of CMAT in salary alone. He said that Mr. Eulo has made important points in the staff report. He referred the Council to the last paragraph of the staff report where Mr. Eulo states that the Council, at its discretion, could increase the funding to 50 cents per subscriber. He stated that this would bring in an additional \$2,000. He noted that the Poppy Jasper Film Festival was very successful, making a profit of close to \$10,000. He did not know what Gilroy's operating budget was but felt that it was over \$100,000

No further comments were offered.

Mayor Pro Tempore Sellers felt that MHAT was an effort that the City should continue to support. However, the challenge is the difficult budget times. If the City continues to increase rates for cable subscribers, it may result in loss of income from the number of cable customers. He stated that he would support sitting down and talking with Charter with a mind set of passing the financial assistance on to the rate payers. He said that it may be a positive move, on the part of Charter, to consider options and that the City talk to them about what they do in other communities and how they can be incorporated in Morgan Hill. He said that he would entertain the possibility of a modest increase in fees; perhaps 50 cents. However, he was anxious that the City would see rates increased at one end and then see a decrease in customers at a rate that exceeds the fee increase.

Mr. Eulo said that the City's current PEG rate is 48 cents per subscriber per month. Therefore, taking the fee to 50 cents would not be a significant hardship. He said that increasing cable costs may result in some individuals looking at their cable rates. However, to the extent that enhance local programming is made available through cable, would have a reverse affect. How these two things counter balance will remain a question. In response to Council Member Grzan's inquiry, Mr. Eulo indicated that the City does not measure Channel 17 and 19 viewership.

Mr. Liegl indicated that Charter Communications has not provided MHAT with the number of individuals who watch the public access channel.

Mr. Eulo stated that he would be willing to inquire whether Charter has viewer measurements for Channels 17 and 19.

Mayor Kennedy stated his support of increasing the PEG charge to 50 cents.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Authorized** the City Manager to Execute an Agreement*

*with the Media Access Coalition of Central California for Public Access Services,
Subject to Review and Approval by the City Attorney.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Supported** increasing the PEG fee recovery to 50 cents.*

Mayor Pro Tempore/Vice-chairman Sellers recommended that the Council/Agency Board consider item 35 at this time as there were several members in attendance for this item.

Action: *By consensus, the City Council/Agency Board **agreed** to consider item 35 at this time.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

35. DOWNTOWN REQUEST FOR PROPOSALS (RFP)

Director of Business Assistance and Housing Services Toy presented the staff, indicating that in July 2004, the City issued a request for proposal (RFP) to interested parties. At that time, proposals were due in September 2004. When the City received the proposals in September, staff reviewed the proposals with the Council's Economic Development Subcommittee (EDS) and that it was determined that additional information was needed from the proposers. The City provided the proposers a 60-day extension to December. As part of this, the City provided the same opportunity to individuals who received the RFP and did not respond to submit a proposal within the 60-day extension period. He indicated that the deadline was December 9, 2004 and that the City received five proposals: 1) Glenrock-Sunsweet site located in the downtown. The proposal is for a 45-50 for sale townhouse units and 4,000 square foot retail building. There is a need for assistance for the infrastructure at an estimated cost of \$1.9 - \$2.9 million. 2) Brad Jones – retail project. Two sites being considered: Sunsweet site and the corner of Third/Monterey. Being proposed is 10,000 square feet of ground floor retail with housing above. The request is for a \$250,000 grant for tenant improvements. 3) Gunter Brothers property located on Monterey Road, north of Main Avenue. The proposal is to remodel and expand the existing granary building into an 11,500 square foot, two story office-retail building. The applicant may apply for Measure C in the future for units to be constructed on the vacant property located behind the granary. The request is for \$363,000 from the Agency and the deferral of City fees. 4) Renovation of the Granada Theater. The proposal is to reconfigure the two-screen theater into a three-screen theater for art, classic and foreign/independent films. Applicant is not proposing to compete with Cinelux, but compliment it in order to capture the market and eliminate the possibility of others coming into the market place. The request is for a little over \$1 million in agency assistance. 5) Casa Diana – EAH project located at the southeast corner at Diana and Butterfield. The proposal is a mixed use development with commercial serving the courthouse and 80 mixed income housing units. Financing is being requesting at \$1.2 - \$6 million, depending on the mixed overall units.

Mr. Toy informed the Council/Agency that staff reviewed the proposal with the EDS and came up with a series of recommendations: 1) the renovation of the Granada Theater is the number 1 priority. He indicated that the Downtown Association states that this is also their top priority. 2) The mixed use

proposal from EAH should be considered separate from the RFP process as it is an affordable housing project. 3) Other than the EAH project, the other proposals are to be considered separate or outside of the RFP process. This recommendation is being made as these projects would require a more in depth analysis and information on the proposals. He noted that a letter was received from the owner of the Flea Market property requesting \$1.3 million in Agency funds to assist with impact fees and infrastructure costs. He said that no other information was submitted from the property owner other than the letter requesting the \$1.3 million. He indicated that the EDS and staff are recommending that no further action be taken on this request as it would be a market rate residential project. With no other information being provided, it should be considered as a regular project that could compete under Measure C.

Mayor/Chairman Kennedy indicated that he and Council/Agency Member Sellers serve on the EDS. He stated that the subcommittee and staff had very little time to review the proposals as they came in late in the process. He referred to the comment made under the third bullet that states that other than the EAH project, no other proposals are being recommended for consideration and should be considerate separate from the RFP process. He stated that he did not recollect concurring with this statement, and that he would like to keep this option open.

Mayor Pro Tempore/Vice-chairman Sellers said that there are 2-3 different levels of projects being considered. There are those that seem to be small, in dollar value, are specific and anxious to proceed. There are projects that are in the planning process. There are housing projects that should be considered in a separate/different way. He concurred that the Granada Theater is a top priority for the Downtown Association. He disclosed that he might be involved with a small business in the downtown and that it may preclude him from voting on the Granada project. However, at this time, it is purely speculative. He felt that the Gunter and Granada projects are ready to proceed. He requested that the Council/Agency go through a reasonable and appropriate process with these two projects; expediting the process and returning to the Council on January 19, 2005. Staff to return with the status of negotiations and a concrete proposal. He felt that these two projects are close enough to fit the criteria to expedite the process and that relative small dollar amounts are needed. He felt that there is an urgency to the downtown as there are a lot of businesses that are in the verge of leaving. If the Council/Agency Board can make a positive statement to the community and show some positive actions, it will go a long way toward stabilizing the downtown community.

In response to Council/Agency Member Grzan's question, Mr. Toy stated that the \$310,000 request for renovation of the Granada Theater would be a grant and would not be paid back.

City Manager/Executive Director Tewes clarified that conditions would be associated with the grant.

In response to Council/Agency Member Carr's inquiry regarding the initial request for concept proposals, Mr. Toy indicated that a proposal was submitted by a different entity for the Gunter Brothers granary site and not by the proposed purchaser of the building. The proposal was refined with a subsequent submittal. Regarding the Granada Theater, he stated that Mr. Wilkinson was not in the picture originally and that there was a different owner.

Council/Agency Member Carr noted that when the Council/Agency Board first put together the idea for downtown proposals, \$3 million were earmarked. It was loosely stated that the \$3 million would come from three pots of RDA funding: 1) housing dollars; 2) infrastructure dollars; and 3) economic development. If the City is dropping all of the housing projects from the first tier, they would be competing for \$2 million.

Mr. Toy identified the following funding sources: 1) \$1 million for housing, and 2) the other \$2 million would come from the 80% funding. He stated that the Sunsweet project could have an affordable component and could tap into the \$1 million for the low/moderate housing component. However, the details have not been worked out at this point.

Council/Agency Member Carr recommended that funding is made clear for the Gunter Brothers and the Granada Theater projects. He noted that Mayor/Chairman Kennedy commented that some of the proposals are being recommended for consideration separate from the RFP process at this time. He said that this may raise concerns as the City has been well over a year into the process of downtown proposals. To jump outside the process for some projects may seem a little disingenuous to those who may have been in the process for some time.

Mayor/Chairman Kennedy agreed that the City has to be fair to all who submitted proposals. However, the City has to look at the windows of opportunity. It was his belief that the Council/Agency should try and follow the process that was created as it has been a good process that has brought in a lot of good projects. However, he did not believe that the City should be a prisoner to the process and throw out potentially good projects just because they do not fit the process. He recommended that the City be flexible enough to make some adjustments, keeping in mind fairness to all applicants.

Mayor/Chairman Kennedy opened the floor to public comment.

Ben Fuller stated that he was in attendance on behalf of the Gunter Brothers project. He indicated that he is proposing to recycle the site and remodel an existing building into a retail-office use. He felt that the project would have a huge impact on the look and feel of Morgan Hill. He requested a short term loan of approximately \$288,000, a facade grant in the amount of \$75,000 and assistance in expediting City planning and permit processing in order to move forward with the project. He also requested prompt action to his request because he is bringing together a unique group of people to the process. The environmental remediation process is also an integral part of the process and has brought into play the State, the Santa Clara County Water District, and the environmental entity that will perform the remediation process. He said that approval of the project will eliminate an eye sore. Further, the project is a proposal for an 11,000 square foot retail-office building and that it will be of a style reminiscent of the buildings constructed in the 1920s. It was his belief that this project will enhance the downtown.

Action: *On a motion by Council/Agency Member Carr, seconded by Mayor Pro Tempore/Vice-chairman Sellers, the City Council **agreed** to extend the meeting time to 12:00 a.m. The motion carried unanimously (5-0).*

Michael Wilkinson, resident of Colusa, indicated that the Granada Theater proposal is an exciting one as it will revitalize the downtown. He stated that the Granada Theater, in addition to being a viable

business once again, can also provide a great spin off affect for the downtown businesses. He said that typically, 50% of movie viewers go out to dinner before or after a movie. This can provide approximately 40,000 patrons to area restaurants in downtown. He stated that he would work with other downtown businesses on various cross promotions. He indicated that he proposes to divide the theater into three movie screens.

Mayor Kennedy noted that the Cinelux Theater is expanding and that there is a proposal to build theaters on the north side of the City. He inquired whether this project would be competing with the Cinelux Theater.

Mr. Wilkinson said that the Granada Theater currently has two screens. In the current environment and the level of customer expectation, the bar has been raised. He said that the Granada Theater auditoriums are in poor condition. He felt that reconfiguring to three screens is a good compromise between desiring the affect of a single screen theater with a live performance stage capability as well as making it a multi screen theater. He indicated that the main auditorium will have over 200 seats and will be equipped with a stage suitable for live presentations and small scale performances. In regards to competition with other area theaters, he said that the type of film programming that he plans on showing will be comparable to Cinearts Santana Row or the Old Camera 3 in San Jose and will not directly compete with the first run mainstream films that Cinelux currently offers. Expanding from 8 to 11 screens is not a very significant change in the overall screen count for the south valley. Granada's three screens would bring Morgan Hill to a total of 14 screens. He felt that this was an acceptable number and should be high enough to discourage potential competition from moving into the immediate area. He said that the potential for competition is real and that it may be wise for the Council to consider restricting other movie theater expansions within the City limits within a certain timeframe to ensure survivability for both businesses. He said that anything happening to the north, toward Coyote Valley, is an unknown to him at this time. He acknowledged that there will be a large population infill should Coyote Valley development move forward. He said that the Granada Theater will provide regional programming so that the type of film shown will not be the typical film you would see in Coyote Valley. He felt that the Granada Theater will have a unique mixture of films and live events. He indicated that the stage depth is approximately 12 feet with a usable depth of approximately 10 feet and 30 feet across.

Brad Jones felt that it was in the best interest of the community to build out the downtown. Speaking for the Downtown Association, he indicated that it was unanimous that the theater was the best and quickest way to help the downtown merchants and would help bring back some night life to the downtown. He addressed his proposal, indicating that it was his intention to help get another building built in the downtown. He said that there has been much discussion about the lack of inventory of buildings in the downtown. He said some of the current retail spaces are good starter locations for businesses and would fill up quickly if he moved into a larger building. He felt that he could help to get a building built by being an anchor for one of these projects. He would like to see a mixed use project with retail and office and/or housing for younger couples or active seniors.

No further comments were offered.

Council/Agency Member Grzan felt that these projects were appropriate for funding. He stated that he has always been a strong supporter of the downtown and that by investing in the downtown, the City invests in itself and its future.

Council/Agency Member Tate also stated his support of the projects but stated that he was not clear as to the recommendation.

Mayor/Chairman Kennedy indicated that staff and the EDS would be meeting again in January and will have more information about these projects. Staff and the EDS would return to the Council/Agency with more specific recommendations.

Mayor Pro Tempore/Vice-chairman Sellers felt that the process needs to be expedited, understanding the work that needs to be done. He would support hearing back on the Granada Theater and the Gunter Brothers projects on January 19, 2005.

Mayor/Chairman Kennedy inquired whether staff is requesting additional information that was lacking from the project proponents.

Mr. Toy indicated that staff has not returned to the project proponents to request additional information. He stated that staff had a brief conversation with representatives of the Gunter Brothers proposal and identified the information that was needed. He said that it is staff's goal, before furlough, to request additional information. The EDS is to meet in January 2005 and that staff and the EDS would return to the Council/Agency on January 19 with its analysis and recommendations.

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the City Council/Agency Board unanimously (5-0) **Accepted** staff's recommended action(s).*

City Council Action

OTHER BUSINESS (Continued):

29. 2004-2005 HAZRDOUS VEGETATION PROGRAM – Resolution No. 5875

Assistant to the City Manager Dile presented the staff report, requesting that the Council adopt a resolution setting January 19, 2005 as the date for the public hearing regarding weed abatement and June 1, 2005 as the date for the public hearing regarding brush abatement.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5875, declaring Weeds and Brush to be a Nuisance and Setting January 19, 2005 as the Date for the Public Hearing Regarding Weed Abatement, and June 1, 2005 as the Date for the Public Hearing Regarding Brush Abatement.*

30. DOWNTOWN AREA BUILDING ALLOTMENT

Planning Manager Rowe presented the staff report, informing the Council that the Planning Commission reviewed this item last night and will be forwarding a recommendation to the Council to increase the downtown area set aside from 40 to 80 units in addition to the vertical mix recommendation. Also, 50 units in each of the subsequent years in addition to the allocation are to be awarded to downtown projects. This would equal 215 units from 2006 thru 2009/2010 fiscal year. In addition, the Diana-EAH project could add an additional 85-120 units which could bring the downtown area totals to 300-335 units. He indicated that staff will be bringing to the Council a detailed report on the Planning Commission's recommendation on how the set asides should be distributed at the Council's January 19, 2005 meeting. He stated that the Planning Commission is not recommending that the Council advance the filing deadline from the September 1 date, so that there is an opportunity for the Planning Commission, as part of the review and evaluation criteria following this competition, to make adjustments to the scoring criteria to make downtown projects rate favorably.

Mayor Kennedy noted that the City Manager forwarded a memo that spelled out the Planning Commission's actions from last night's meeting via e-mail. He stated that the report states that the units total 215 units by the year 2010.

Mr. Rowe said that this number does not include the possibility that there may be some additional units through the affordable set asides for the Diana-EAH project that is also located in the downtown area. This could raise the number further to between 300 and 335 total units.

Mayor Pro Tempore Sellers said that he was pleased to see that the City is able to work through the Measure C process. He stated that there are two major issues that he would like to continue to work on as part of the process: 1) affordability of downtown housing; and 2) timing (e.g., four years).

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Received** the report.*

31. BUTTERFIELD NORTH CONNECTION STUDY

Deputy Director of Public Works Bjarke presented the findings of the Butterfield North Connection Study, required as part of the Circulation Element of the General Plan. He indicated that the study was meant to help the City define how it will align its roads at the north end of the City with a goal of connecting Butterfield Boulevard to Hale Avenue. He informed the Council that Robert Eckols, the City's traffic consultant, was in attendance and would address the three alternatives: 1) Madrone Parkway as a grade separated structure that would go underneath Monterey Road and the railroad tracks, connecting to Hale Avenue; 2) Cochrane Avenue, going underneath Monterey Road and railroad tracks, coming up to grade and connecting to Hale Avenue; and 3) Llagas Creek Drive – a road that does not currently exist. The road is located south of Llagas Road, south of the Old Monterey/Monterey intersection. This alternative does not require bridge structures or grade separated structures. He stated

that staff took this same presentation to the Planning Commission on November 9, 2004. Staff recommended Alternative 3, the Llagas Creek Drive, the preferred alternative, because it is the least costly and meets all the requirements of the circulation element. The Planning Commission stated that they did not care for Alternative 3 as the best alternative and requested additional information in order to choose from Alternatives 1 and 2. He informed the Council that staff has not formally engaged any of the affected property owners associated with the three alternatives. Staff felt that it was important to bring this presentation to the Council in order to receive direction.

Robert Eckols, Senior Associate, Fehr & Peers, presented a power point presentation on the findings that his firm came to, focusing on the three alternatives as presented by Mr. Bjarke. He indicated that the Public Utilities Commission (PUC) is no longer supporting at grade crossings of freight and commuter rail lines, noting that the City would have both in this situation. Therefore, it is difficult to receive this type of approval. The City will need to figure out a way to get across and connect between Butterfield, Monterey and Hale. He presented traffic volume counts from 2001 and early November 2003, after all the Highway 101 lanes were open. It was found that at the northern area, there was between a 30%-40% drop in the total volume in the north/south direction. He indicated that even some of the east/west approaches dropped substantially. A guesstimation was made in terms of the watershed at Tilton, in terms of traffic moving north and south. When you move to the 2025 conditions, he said that one of the City's models contained some assumptions for the Coyote Valley area. He contacted VTA and obtained their current regional model. He updated this with the land use assumptions contained in the model.

Mayor Kennedy stated that he raised a concern with the City of San Jose and the VTA in that the VTP 2030 does not include the build out of Coyote Valley.

Mr. Eckols indicated that the VTP 2030 includes the Cisco project (14,000 additional jobs in the area and a small number of houses). He agreed that the VTP 2030 does not include the complete build out of Coyote Valley.

Mr. Eckols addressed the three new alternatives and the existing general plan and addressed each as follows:

Existing General Plan

The existing general plan proposes an at grade crossing with four lanes connecting Hale and Monterey Road. Traffic would be dispersed at this point. Madrone, on the east side of Monterey Road was proposed as a two lane connector street to serve primarily the industrial park area. He said that the connection to Butterfield will be along Madrone to Butterfield and allows for individuals to use Monterey Road to access Cochrane and Butterfield. Connection to the freeway from Hale Avenue area would be indirect as an individual would have to shift onto Cochrane to access the freeway. He indicated that the estimate for this work would be \$2.3 million based on MH Engineering's estimation that includes right of way costs.

Alternative 1

Alternative 1 is the Madrone alignment that would go underneath the railroad tracks. This alternative would create three intersections: 1) at Hale Avenue; 2) one serving the entrance to the industrial buildings; and 3) a loop road to connect back to Monterey Road. The Planning Commission questioned whether there was a need for the connecting road in order to forgo the cost of the salvage yard. He indicated that a detail analysis has not been performed, but that the elimination of this road would result such that the two lane section of Madrone and the two lane section of Butterfield from Madrone to Cochrane would need to be widened. This is attributed to the added traffic that would be using the connection. Although it is a good connection, it does not directly connect traffic to the freeway. The cost for this alternative is \$16-\$22 million as it is not known the cost to acquire the salvage yard.

Alternative 2

Alternative 2, the Cochrane alternative. Four lanes would be taken underneath Monterey Road and under the railroad tracks, meeting up with Hale Avenue. This alternative has additional significant impacts in terms of residential takes. There are potential impacts to the gas station and the restaurants located at Monterey and Cochrane Road. There is a creek that goes through the area that would necessitate realignment of the drainage area. He felt that there were more impacts associated with this design versus the Madrone design. The actual structural cost for this alternative is slightly higher but that the right of way costs would be less than the other alternative(s) because it would not eliminate active businesses.

Alternative 3

Alternative 3 uses the connection that is proposed in the General Plan on Llagas Creek, maintaining the Tilton Avenue connection. He noted that there is some existing vacant property for the Llagas Creek connection. As the connection is contained in the General Plan, the connection would be installed with any development of property in the area. Tilton would not be widened from two to four lanes as proposed in the General Plan. It is proposed to slope Monterey Road somewhat from the center similar to what was done at Masten in Gilroy, making it a smoother transition. The approach would be widened slightly to provide a left turn lane from Tilton on to Monterey Road and a right turn lane to allow traffic to bypass any left turning vehicles. He said that the PUC could be advised that this is a safety and operational improvement to maintain the two lane road as a connector. Regarding the future traffic volumes, as it is a two lane connector, it would not carry as much east-west traffic on Tilton. Some of the traffic would be transitioned from Monterey to Hale and Hale to Monterey. This alternative has a cost estimate of approximately \$2.8 million and is closer to the original Madrone Parkway alternative.

Mr. Eckols addressed the findings that support why he believes there will not be a larger at grade crossing. He said that the regulations of the PUC and Union Pacific would not support at grade crossings. He did not believe that VTA would be a supporting agency of an at grade crossing because they are protecting the Caltrain corridor and trying to maintain it for commuter service. In terms of the two grade separation alternatives, if the City went forward with one of these, a four lane connection would be constructed. The cost would be \$15-\$23 million, depending on which alignment the City considers.

Mayor Kennedy stated that he supported alternative 3 for the interim, but felt that at some point, a long range alternative would be a grade separation when the funds become available. He said that it may be that high speed rail may be a viable option. He noted that alternative 3 does not provide a direct connection to Butterfield Boulevard, but that for safety reasons, it is one that is viable.

Council Member Tate agreed with Mayor Kennedy. However, if it is the City's long term goal to get the grade separation, it does not make sense that the PUC would not accept a phased plan to achieve the grade separation. He did not believe that the PUC would approve moving the at grade crossing from Tilton to Madrone Parkway by the fact that phase 1 would be moving the at grade crossing to Madrone Parkway and phase 2 is the grade separation at Madrone Parkway.

Mayor Kennedy said that he and public works staff met with the PUC and Union Pacific representatives, indicating that they did not support at grade crossings.

Council Member Tate expressed concern that the City would be spending a lot of money on an interim solution.

Mayor Kennedy stated that the Tilton grade crossing needs to be fixed.

Council Member Tate felt that a better solution would be to close the Tilton grade crossing.

Council Member Carr inquired whether the Bailey-Highway 101 intersection opening, connecting Monterey Road and Santa Teresa Boulevard, would be a benefit to the City. He said that the City always felt that it needed an east-west connection from Butterfield. If thought was given to having Butterfield extend further north (e.g., all the way to Burnett Avenue), would it lessen the ability of individuals to travel east-west in an area that could get congested? If so, this would force individuals to stay on Butterfield Boulevard longer, further north. This would remove individuals from the congested areas of Cochrane and Monterey Roads and perhaps solve some of the problems or give the City a broader window in which to work from.

Mr. Eckols responded that the Bailey-Highway 101 intersection would have some near term benefits. However, it would depend on the direction individuals are flowing. He stated that one of the missions of the study was to make the connection over to Hale Avenue. He said that traffic could be moved further to the north; moving traffic up to the high school area. This may be traffic the City may or may not want. Traffic could be taken to Burnett Avenue and then transitioned over. He noted that there are a number of developed properties that would interfere with an alignment to the north.

Council Member Carr felt that problems exist with the alternatives identified. He said that it appears that the City is trying to take the north-south traffic, move it in an east-west direction and disburse it between Highway 101, Monterey Road and Santa Teresa Boulevard. If the traffic could be kept on Butterfield Boulevard further north, and then move traffic onto Monterey Road, out of the congested areas of Morgan Hill, may buy the City more time.

Mr. Eckols said that a short term alternative would be to complete the connection from Cochrane to Madrone Parkway. This alone would give individuals more options of coming further north and

avoiding the congestion taking place at Cochrane and Monterey Roads. This would split the traffic a little more.

Council Member Grzan felt that the Council has a solution before it, but that the City does not have the funding for the solution. Now, the City will make do with an alternative that will not provide the long term solution needed. He recommended that the City work on funding and make the right decision, looking at the long term solution; connecting Cochrane Road to Hale Avenue.

Mayor Kennedy suggested connecting Cochrane Road to Hale Avenue be the long term solution, but that in the interim, the other two alternatives are performed. He noted that the City does not have the money to connect Cochrane Road to Hale Avenue at this time.

Mr. Eckols said that as traffic builds up and should it take the City 10-15 years to secure funding for the grade separation, the combined alternative 3 would give the City some breathing room should some of the Coyote Valley traffic use this facility. He indicated that the Tilton portion is approximately \$500,000-\$700,000 of the \$2.5 million and that fixing Tilton Avenue is a relatively low cost solution to an existing safety and operational problem. Fixing Tilton Avenue would buy the City capacity over the next 10+ years and gives the City time to build up the money for a grade separation as a strategy.

Council Member Tate noted that figure 11 of the report talks about \$4.5 - \$5.5 million.

Mr. Eckols indicated that the correct number is the one that was identified in the presentation and the hand out. In response to Council Member Carr's inquiry, he indicated that there is a lot of demand and traffic associated with the spur identified with the Madrone Parkway that allows individuals to go back to Monterey Road. He stated that this proposal would close one driveway along the frontage of an existing building. There would be a consolidated access and stated that the loop back road provides a direct way for individuals coming out of the commercial property to get back over to Monterey Road and head north. He indicated that it is not being proposed to direct a lot of traffic through the residential area. With the Cochrane Road proposal, there would be a two bridge structure proposed: one for the road and one for the railroad track. It would include a channel section in between. There would be the same number of bridges as proposed with the Madrone Parkway alternative.

Mayor Kennedy said that in looking at the side street coming off of Cochrane Road, it is close to the new street that is part of the Scott Schilling proposal. He inquired whether the street in the Schilling project was designed to handle this kind of traffic and whether it could be required that this street be built to the appropriate standard in order to keep the option open for future use.

Director of Public Works Ashcraft informed the Council that the street in the Schilling project could handle additional traffic. He indicated that the general plan states that the property would be substantially impacted in its development potential because of the four lane road located across the property. He said that the property owner is well aware that the City cannot build the at grade as listed in the general plan and that the owner would like the City to do something that would allow him to develop his property. He stated that a general plan amendment would be needed as the general plan states that Tilton Avenue must be closed. Therefore, he did not believe that the City would want to spend a lot of money when the current general plan states that Tilton Avenue should be closed. He said that for \$½

million, the County was able to elevate one side of Masten Avenue to eliminate the hazard. If the Council does anything with the general plan in the short time that states that Tilton Avenue is to remain open, staff would return immediately and include \$500,000 in the CIP in order to fix the problem and leave Tilton Avenue open. He stated that staff can design and build this improvement in less than a year. If a different alternative is left as a long term option in the general plan, property owners would need to be notified and be invited to attend a general plan hearing if the City decides that it would be bisecting an established residential neighborhood with a major roadway. He felt that there would be substantial public testimony should bisecting two residential areas be contemplated.

Mayor Kennedy felt that alternative 3 was the alternative the City should proceed with. However, for the long term, he felt that the City needed another grade separated crossing, perhaps at Tilton Avenue.

Council Member Tate felt that Madrone Avenue should be the location of a second grade separation crossing.

Mayor Kennedy opened the floor to public comment.

Chris Bryant felt that Council Member Carr raised an interesting point regarding Butterfield Boulevard and how far it should be extended. He said that this was an issue that was previously addressed. He inquired whether traffic counts included the very short term ramp up of traffic attributed to the new high school. As the high school adds more classes, it will add more traffic to Monterey Road and Burnett Avenue. He felt that having a long term plan to push Butterfield to Burnett would move some of this traffic as a direct flow to the high school. He stated that another alternative would be to move traffic off of Monterey Road through the downtown because it would give individuals an incentive to get onto Butterfield sooner at Tennant or Dunne. He noted that traffic would need to get back onto Monterey Road in order to get to Burnett Avenue. He recommended that the City look at getting traffic onto Butterfield sooner as a long term plan.

No further comments were offered.

City Manager Tewes said that in light of the PUC's decision, it would seem to be appropriate to amend the City's general plan to provide for an alternative to meet the general plan traffic goals. He requested Council direction as to the preferred option to study in the environmental report and to initiate the general plan change knowing that some of the alternatives cost a lot of money and have impacts on private property owners.

Mayor Pro Tempore Sellers stated his support of pursuing a long term solution. He said that he would hate to pass up an opportunity to include an at grade crossing improvement at Tilton Avenue with the assistance of a Measure C project to be constructed. He noted that there were two alternatives that address long term solutions. Instead of picking one, he recommended that the City look at both alternatives and go through the public process, looking at the alternatives so that citizens can be made aware of the possible options.

Mayor Kennedy recommended adding a third alternative; making Tilton the possible solution.

Mayor Pro Tempore Sellers said that the east side of Monterey Road and this quadrant is impacted already and that there would be a greater impact as Sobrato High School adds classes.

City Manager Tewes said that if the City was to amend the general plan to accommodate the traffic goals with a very costly alternative, it would be the City's obligation to identify the resources to accomplish these goals. He noted that the City has in place a traffic impact fee program of approximately \$80 million and that the City would have to increase traffic impact fees 25% to accomplish some of these more expensive options. Staff believes the City can meet the general plan traffic goals through 2020 with option 3. He noted that the Council reviews the general plan every 10 years and that in five years, the Council would be reviewing the general plan again. Therefore, the Council may want to place the long range options on hold, to be considered as part of a larger review of the entire general plan rather than adopting two or three options to amend the general plan at this time, noting that there is no funding associated with right of way impacts as this time.

Mayor Kennedy noted that he and Mayor Pro Tempore Sellers support alternative 3.

Council Member Carr said that with the review the Council has undertaken this evening, alternative 3 makes a lot of sense. He inquired whether there was an urgency for the Council to take action this evening.

City Manager Tewes said that there is a property owner who is anxious to have this issue resolved as he needs to know whether he can develop his property located west of the railroad near the Madrone crossing with or without the grade crossing.

Council Member Carr stated that Mayor Kennedy's suggestion of looking at Tilton Avenue as a possible grade separation is intriguing. However, he did not know if he could support its inclusion as an alternative this evening.

Mayor Kennedy clarified that it was his recommendation that Tilton Avenue and the other two grade separations be a long term solution to be achieved within the next 20 years. However, he felt that the City needs to proceed with alternative 3 in order to meet the current general plan requirements.

Council Member Tate did not see that the Council has any other alternative from a budget stand point.

Mayor Pro Tempore Sellers felt that alternative 3 would hold the City in good standing and concurred that the City has to give thought to long term solutions.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Mayor Kennedy, the City Council unanimously (5-0) **Directed** staff to move forward with Alternative 3 and that **further consideration** be given at a future Council meeting to Alternative 1 and 2 as well as any other options.*

Action: *On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0) **agreed** to **extend** the meeting to 12:30 a.m.*

32. ALTERNATE APPOINTMENT TO THE CITY'S 2006-CENTENNIAL PLANNING STEERING COMMITTEE

Mayor Pro Tempore Sellers said that it was his understanding that the Council appointed a centennial steering committee and that this steering committee would be appointing the centennial committee members. He expressed concern that the process was moving ahead and that the steering committee was undertaking the charge of the centennial committee. He stated that he would like to know whether the steering committee is planning to move forward with the planning of the 2006-centennial celebration and not appoint other individuals. He stated that he was pleased to see that the City Clerk was interested in working with the steering committee. Therefore, he was not inclined to appoint another citizen to the steering committee this evening. He noted that the Council did not appoint Council members for the initial planning phase. He recommended that the Council hear back from the steering committee to find out the direction they are heading and what they need from the Council. At that time, the Council can determine who it will appoint to assist the committee.

Mayor Kennedy said that it was the Council's original intent for this to be a steering committee that would put together the planning of a broader committee. He informed the Council that the steering committee is identifying other individuals and various organizations to expand the steering committee. Many of the members of the steering committee would like to be in leadership position. He felt that it would be appropriate for the steering committee to present the Council with a report.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Directed** that the 2006-Centennial Steering Committee report back to the Council.*

City Council and Redevelopment Agency Action

OTHER BUSINESS (Continued):

33. SELECTION OF CITY COUNCIL MAYOR PRO TEMPORE AND REDEVELOPMENT AGENCY VICE-CHAIR

Mayor Pro Tempore/Vice-chairman Sellers noted that he was selected to serve as Mayor Pro Tempore in his third year of his four-year term in office. He suggested that Council/Agency Members Carr or Tate serve as Mayor Pro Tempore this year or the next and that Council Member Grzan be considered for appointment as Mayor Pro Tempore in his third year in office.

Mayor/Chairman Kennedy felt that it was important to have some experience on the Council before a Council Member is appointed to serve as Mayor Pro Tempore but does not believe that the experience needs to be several years. He felt that Council Member Grzan could be considered next year for appointment to the Mayor Pro Tempore position.

Council/Agency Member Grzan stated that it would be appropriate to consider a newly elected official in the second year of their term for Mayor Pro Tempore.

Acting as City Council:

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Appointed** Council Member Tate to Serve as Mayor Pro Tempore.*

Acting as Redevelopment Agency Board:

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Appointed** Agency Member Tate to Serve as Vice-Chairman of the Redevelopment Agency.*

34. ANNUAL FINANCIAL REPORTS FOR FISCAL YEAR 2003-2004

Director of Finance Dilles presented the staff report, noting that it was indicated earlier this evening by the City's independent auditors that the City received a clean, unqualified opinion for the City's financial statements as well as for the Redevelopment Agency statements. He noted that the auditors provided the City with a compliance letter which states that the City is in compliance with all the redevelopment requirements under state law. In terms of the City's situation, the Comprehensive Annual Financial Report shows that the general fund has an excess of \$10 million in reserves. Even though the City is still concerned about bringing its revenues and cost into alignment, the City is still in a strong financial position in the general fund. In the City's Redevelopment Agency capital projects fund, the report shows that the City has approximately \$900,000 in the unencumbered fund balance at June 2004 and approximately \$6.8 million in the housing fund balance.

Mayor Pro Tempore/Vice-chairman Sellers referred to the introduction section of the financial report, second bullet, regarding the City's reserves where it states that the unrestricted assets includes amounts designated for the general reserve. He said that it would be helpful to separate the three reserves for: 1) economic uncertainty, 2) the general reserve; and 3) emergency funds. Further, that the fire, aquatics, etc. be separated out. He recommended that this be added to the Council's goal setting session discussion.

Mr. Dilles said that it was his understanding that at one time the Council identified, in a policy, the specific amounts for the components of the reserves as identified by Mayor Pro Tempore Sellers. The Council stated that the City has a requirement of a 25% reserve for the purposes enumerated by Mayor Pro Tempore Sellers and that it was not necessary to spell it out in detail.

Mayor Pro Tempore Sellers recommended that the discussion of separating the reserves for future budgets be discussed as part of the retreat and part of the budget discussion.

Mayor/Chairman Kennedy opened the floor to public comment. No comments were offered.

Acting as City Council:

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Accepted** the Comprehensive Annual Financial Report for Fiscal Year 2003-2004.*

Acting as Redevelopment Agency Board:

Action: *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Board unanimously (5-0) **Accepted** the Financial Statements for the Redevelopment Agency for Fiscal Year 2003-2004.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:20 a.m. in memory of Bob Engles.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY